BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RALPH D. AND LENA C. VAUGHN)

For Appellants: Ralph D. Vaughn, in pro. per.

For Respondent: Crawford Ii. Thomas
Chief Counsel

Paul J. Petrozzi
Counsel

O P I N I ON

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Ralph D. and Lena C. Vaughn against proposed assessments of additional personal income tax in the amounts of $208.39, $150.18, and $120.00 for the years 1968, 1969, and 1970, respectively.

The only issue to be decided is whether payments to a self-employed individual's retirement fund

which were deductible under federal law during the years 1968, 1969, and 1970 were also deductible in computing California state income tax for those years.

Appellants, husband and wife, are the sole proprietors of a greeting card business in La Crescenta, California. On their California income tax returns for each of the years in issue they claimed a deduction for $2,000 labeled "HR-10 Keogh Plan." These deductions were disallowed by respondent and a Notice of Additional Tax Proposed to be Assessed was issued on August 7, 1972, for each year in issue. Appellants protested the proposed assessments. When their protest was denied appellants appealed.

The Keogh-Smathers bill, popularly known as the Self-Employed Individuals Tax Retirement Act (Pub. L. No. 87-792, 76 Stats. 809, effective October 10, 1962) permitted a self-employed individual to establish a "qualified" retirement fund for his own benefit and in the computation of his federal income tax to deduct, within limits, annual contributions to such fund. The California counterpart to this legislation was not enacted until 1969 (Stats. 1969, ch. 1607, p. 3282) and was expressly made applicable to taxable years beginning after December 31, 1970.

Federal law, with possible exceptions not pertinent here, does not establish the liability of California residents for California income tax. Federal revenue provisions which have no counterpart in California law cannot be used by California taxpayers in computing their state income tax liability. (Appeal of Lucille F. Athearn, Cal. St. Bd. of Equal., May 8, 1973; Appeal of Arthur G. and Eugenia Lovering, Cal. St. Bd. of Equal., April 21, 1966.) In the instant case California, during the years in issue, did not have a provision comparable to the federal Self-Employed Individuals Tax Retirement Act, and no deduction was available in computing California income tax liability. Respondent, therefore, acted correctly in denying the claimed deductions.

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Appellants object to the imposition of an interest charge on the assessed deficiency because, they say, respondent was remiss in not notifying them of the deficiency for an excessively long period after the tax returns in question were filed. In this regard sections 18586 and 18588 of the Revenue and Taxation Code allow the Franchise Tax Board to issue a Notice of Proposed Assessment for a given year at any time within four years after the last day prescribed by law for the filing of an income tax return for that year. Here, respondent issued the Notice of Proposed Assessment for each of the years 1968, 1969, and 1970, on August 7, 1972. Since the four year limitation period for 1968 did not expire until April 15, 1973, all the notices were well within the four year period. Section 18688 of the same code is framed in mandatory language, requiring that interest shall be assessed, collected, and paid upon the amount assessed as a deficiency. Respondent has no discretion in this regard.

Appellants do not dispute the terms of the law as written; instead they argue that the law should have been written in different terms. They also argue that the law is unfair as applied to them in this case. We are charged with applying the law as written. sug-gestions with respect to changing the law should be addressed to the Legislature. (Appeals of George A. and Suzanne M. Khouri, et al., Cal. St. Bd. of Equal., June 6, 1973.)

Under the circumstances of this appeal we find no error in the respondent's assessment of a deficiency nor in the imposition of an interest charge thereon.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY **ORDERED, ADJUDGED AND DECREED,** pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Ralph D. and Lena C. Vaughn against proposed assessments of additional personal income tax in the amounts of $208.39, $150.18, and $120.00 for the years 1968, 1969, and 1970, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of October, 1973, by the State Board of Equalization.

_____, **Chairman**

_____, **Member**

_____, **Member**

_____, Member

_____, **Member**

ATTEST _____, **Secretary**